



The Attorney General of Texas

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Honorable Oscar Mauzy
Chairman
Committee on Jurisprudence
Texas State Senate
P. O. Box 12068
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Opinion No. JM-368

Re: Whether a ticket-vending computer terminal which merely dispenses tickets is a "gambling device" under chapter 47 of the Penal Code, and related questions

Dear Senator Mauzy:

You ask whether the PAT-2000, a ticket-vending computer terminal is a "gambling device" under sections 47.01(3) and 47.06 of the Texas Penal Code. You also ask whether subsections (a) and (b) of 47.06, which set forth the elements of the crime of possession of a "gambling device," are unconstitutionally vague.

Section 47.06 provides, in part:

(a) A person commits an offense if he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of such device.

Section 47.01(3) provides:

'Gambling device' means any mechanical contrivance that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.

Application of these provisions depends upon the physical characteristics of the particular object or device in question. See Attorney General Opinions MW-168 (1980); H-1153 (1978); H-940 (1977). Syntech PAT-2000 computer terminals are known as "transaction processing equipment." The technical information submitted to us shows that they record transaction information and distribute tickets. The PAT-2000 is capable of dispensing a wide range of products, such as airline tickets, entertainment tickets, and money orders. It is similar in function to the automatic teller machines which are now in use across the state. Nevertheless, many of the PAT-2000 terminals which are presently produced in Texas are manufactured to produce tickets which are used in the New York State Lottery. Because the PAT-2000 terminal contains no data base for lottery tickets, however, the tickets cannot actually be dispensed until it is connected to the main computer in New York.

The statutory definition of "gambling device" requires, among other things, proof that the award of a thing of value by the device be "determined by chance, even though accompanied by some skill." Penal Code §47.01(3); Attorney General Opinions MW-168 (1980); H-1153 (1978). Thus, even if the PAT-2000 was designed specifically for a purpose, such as a lottery, which would constitute an offense in Texas, the offenses described in subsections (a) and (b) of section 47.06 require proof that the machine in question is itself a "gambling device" or subassembly of a "gambling device" within the meaning of section 47.01(3). See Attorney General Opinion MW-168 (1980).

The foregoing description of the PAT-2000 demonstrates that its sole function is to dispense tickets. Once the terminal is connected with the main computer in New York, the tickets dispensed by the PAT-2000 will have state lottery numbers on them. The element of chance, however, is added in an entirely separate process and is not an essential element of the product at issue. The element of chance occurs in the lottery drawing, not in the transfer of a lottery ticket. Although the actual sale or possession of lottery tickets in Texas is an offense, see Penal Code §§47.03(a)(5), 47.07(a), we deal here only with the narrow question of whether the PAT-2000 is a "gambling device" per se.

Consequently, based on the information about the PAT-2000 submitted in connection with your opinion request, we conclude that the essential element of chance is not present in the PAT-2000 terminal. We note that although the element of chance may be temporarily removed by "disabling" a device, this will not prevent it from being a "gambling device." See Attorney General Opinion H-940 (1977). This is not, however, relevant to the case at hand because the PAT-2000 contains no element of chance and need not be "disabled."

We do not believe that the legislature intended to include within "gambling device," a terminal which is capable only of dispensing tickets. The legislature intended section 47.01(3) to reach devices

such as slot machines and roulette wheels. See Practice Commentary to section 47.01 (suggesting that a "mechanical contrivance" may also be required by the definition).

In light of this conclusion, we do not reach your second question of whether the void-for-vagueness doctrine prevents application of section 47.01(3) and subsections (a) and (b) of section 47.06 to the PAT-2000 terminal.

S U M M A R Y

A "gambling device," as defined in section 47.01(3) in conjunction with subsections (a) and (b) of section 47.06, does not apply to the Syntech PAT-2000, a ticket-vending computer terminal which merely dispenses tickets. Such a device lacks the element of chance essential to a "gambling device" under section 47.01(3).

Very truly yours



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